



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/121,702	07/24/1998	OLIVER BECK	016906/0183	3602

7590

04/02/2002

FOLEY & LARDNER  
3000 K STREET NW SUITE 500  
WASHINGTON, DC 200075109

EXAMINER
----------

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED: 04/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO. <i>111</i>
-----------------	-------------	----------------------	--------------------------------

EXAMINER
----------

ART UNIT	PAPER NUMBER
----------	--------------

*31*

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner of Patents and Trademarks

*see attached*

Art Unit: 3743

**NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37  
CFR 1.192©**

Appellant's brief presents arguments relating to the purported patentability over the prior art of claims 16 and 17 indicated by applicant, in Paper No. 21 received December 27, 2000, as being drawn to a non-elected species. That election was made without traverse. There is no provision in the current rules governing appeals for the examiner to enter a new grounds of rejection on appeal.

The Examiner

will not reopen prosecution based on the belated recognition by Appellant of subject matter which could have been claimed, but was not, during the <sup>examination</sup> phase of this application. Including arguments in the Brief <sup>directed to the purported patentability of claims 16 and 17</sup> will not contribute to an orderly and timely decision on this appeal.

Appellant's options are, as the Examiner sees them to:

1. File an RCE so that claims 16 and 17 can be properly considered by the Examiner,
2. File a petition to have claims 16 and 17 considered based on whatever legal or factual justification Appellant can produce; or
3. Submit a new Brief without arguments addressing non-elected claims 16 and 17, and without requests for their inclusion.

This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP §§ 1002 and 1201.

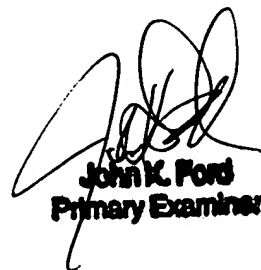
Art Unit: 3743

The Examiner believes that the Board, prior to rendering its decision, should have established which claims are properly before it. Appellant, if he intends to pursue claims 16 and 17, should do so in an orderly fashion, so that the Board's decision will be unambiguous and Final.

Appellant is required to comply with provisions of 37 CFR 1.192(c).

To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192© within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.



**John K. Ford**  
**Primary Examiner**

J. FORD:th  
March 4, 2002